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beginnings of colonization came later as an offshoot and almost as a casual development from the trading empire.

EDWARD P. CHEYNEY.

Documents relating to Law and Custom of the Sea. Edited by R. G. MARSDEN. Volume II., 1649-1767. [Publications of the Navy Records Society, vol. L.] (London: Printed for the Navy Records Society. 1917. Pp. xxxiii, 457.)

THE present volume, like its predecessor, is in large part made up of extracts from original records, particularly those of the prize courts. The editor states that the prize records are in a fair state of preservation, but that, as they were framed in the same bare and technical terms and contained little beyond the bald order of condemnation or of restitution of the ship or goods, they are disappointing as regards the light which they might have been expected to throw upon the growth of prize law. Sometimes, as we had occasion to remark concerning the previous volume, one may wish that the entire text, instead of an extract, of a certain record had been given, since even formal recitals may now and then convey, when read in connection with a judgment, a meaning more readily discoverable by an expert in our subject than by an expert in another. The editor, however, prints the full text of a considerable number of orders in council, of letters of marque and reprisal, of royal instructions to men-of-war and privateers, and of other and cognate documents; and he reproduces from the printed text in the *Collectanea Juridica* (I. 133) the celebrated report of the British law officers, Sir George Lee, Dr. Paul, Sir Dudley Ryder, and the solicitor general, W. Murray, afterwards Lord Mansfield, on the case of the Silesian loan.

We have more than once had occasion to deprecate the widely prevalent but uninformed supposition that the questions of maritime law raised during the present great international conflict are in the mass essentially new. Even the most cursory and inexperienced perusal of the present volume should suffice to dissipate such an assumption. In respect of numerous important questions, the contents, fragmentary though they be, carry us back to a time antedating by more than a century the wars growing out of the French Revolution and the Napoleonic Wars.

Worthy of special notice, as indicating that present conceptions are by no means so far advanced over those of earlier times as is generally assumed, is a neutrality proclamation issued by Charles II., February 8, 1668 (p. 70), which forbids any act of hostility in English waters or any hovering there for hostile purposes, and, in case men-of-war or a man-of-war and a merchant ship, of the opposing belligerents happen to be in port at the same time, requires one of the men-of-war to be detained for two tides after the other man-of-war or the merchant ship shall have departed. A foreign privateer having prize property in its possession is forbidden to stay in port more than twenty-four hours,

unless constrained by "contrary winds, blocking up by enemies, or other distress", or to sell or leave behind prize goods. Not only are English ships that shall "victual, furnish, or recruit themselves for voyages at sea" to be detained where the "provision or furniture" is suspected "to be designed for any other than trading or fishing voyages", but English subjects are forbidden to enter the martial service of any foreign state, or to accept and execute any commission of war or letter of marque and reprisal. It is interesting to find, under date of July 5, 1712, an inquiry ordered upon a complaint of the Swedish minister that a ship fitting out at Bristol, manned with English sailors, and alleged to be an English ship bound for the Mediterranean, was in truth designed for the Czar of Muscovy.

On the other hand, as indicating that the capacity to "blow hot" and "blow cold", according to interest, is not peculiar to any age, it is curious to contrast a sentence of the Court of Admiralty, in 1653, condemning a Dutch ship for having traded at Barbados contrary to the act of October 3, 1650, which forbade foreign ships to trade with any of the English plantations or islands in America without a license from Parliament or the Council of State, with the instructions given to Captain Ming in 1662 to force a trade upon the Spanish West Indies, the trade with which the King of Spain, their sovereign, had, so the instructions declared, endeavored to engross "contrary to use and custom of all governments and the lawes of nations" (pp. 19, 41). In connection with these two documents, it is instructive to read the commission given in 1729 to a Spanish *guarda costa* (p. 270).

Several documents and extracts from documents are printed which serve to illustrate certain phases of the centuries-old controversy as to the stoppage of provisions destined to the enemy. Under date of May 17, 1665, we have a communication from the Council of State to the judges of the Admiralty urging them to treat as contraband not only naval supplies, such as canvas, masts, pitch, and tar, but "also wine, oil, brandy, fish, corn, salt, flesh, and all other things that tend as provision unto the support of life", since his Majesty would "in vain attempt the reducing of his enemies, if they shall enjoy the freedom of such unlimited supplies". The judges, it appeared, had forborne to go so far (p. 57). On June 27, 1694, the Lords Commissioners of the Admiralty ordered Admiral Berkeley to send some of his ships, "together with two fire ships", to seize a number of Danish and Swedish ships, proceeding under Swedish convoy and laden with "corn, naval stores, or contraband goods", and to bring them into an English port (p. 160). Fifteen years later (April 28, 1709) an Order in Council was issued for the "stopping" and bringing into an English port of all neutral ships laden with corn and bound to France. The immediate occasion of the order was the receipt of information that there was then "great scarcity of corn" in France; and in these circumstances it was declared to be of the "highest importance . . . to distress the enemy as much as possible

by taking the most effectual methods for preventing their receiving such supplies at this juncture" (pp. 210, 211).

The next document bearing upon this question is a brief extract from an opinion of Sir Dudley Ryder and Mr. Murray (later Lord Mansfield) of May 10, 1746 (p. 323). We can only regret that the letter in which the extract was found, if it could not be textually reproduced in a foot-note, was not summarized with legal understanding and precision. Even the descriptive heading apparently betrays a misapprehension of the nature of the legal questions involved. A similar comment must be made upon the singular statement (p. 342), regarding a Dutch *placaat* of 1747 forbidding the export of "warlike and shipping stores", that the "absence" of such an order in later times led to the "armed neutrality". Nor can one help doubting whether the framers of the *placaat* would have accepted the editor's description of the list of articles, whose export was prohibited, as a "list of contraband", in the usual sense of that phrase. Again, in a foot-note to an extract from a document of 1758 (p. 382), relating to the controversy concerning the Rule of the War of 1756, the question of contraband is mentioned in a very brief summary of another document evidently relating to the same controversy. The precise sense in which the author of the second document supposed the contraband question to be involved is not disclosed. The full text of both documents probably would be very instructive.

Sentences of condemnation are produced in 1672 (p. 82), in 1695 (p. 169), in 1709 (p. 209), and in 1767 (pp. 399-400), clearly showing the belligerent character and rights attributed by the British Admiralty to non-commissioned British armed merchantmen in time of war. In conformity with the established law, their captures were condemned as prize, the condemnation being for the benefit of the crown, which then as an act of grace would remit to the captor a part or the whole of the proceeds. The case in 1767 was that of the French ship *L'Indien* taken by the East India Company's armed ship *Revenge*. After the condemnation, the crown, upon a petition of the company, setting forth that the *Revenge*, while on a voyage from Bombay to Bengal, did "attack, seize, and take" the *Indien*, carrying twenty-four guns and 225 men and laden chiefly with military stores for Mauritius, where "the French ships and forces" were then assembled in order to attack the said Company's settlements", ordered "the said prize ship and cargo" to be delivered over to the company as its absolute property.

J. B. MOORE.

Freedom after Ejection: a Review (1690-1692) of Presbyterian and Congregational Nonconformity in England and Wales. Edited by ALEXANDER GORDON, M.A. [Publications of the University of Manchester, Historical Series, no. XXX.] (Manchester: University of Manchester Press, 1931.) AM. HIST. REV., VOL. XXIII.—25.